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Relevant Docket Entries.

Civ—1971—80 M. Russell Turley & 1
v. Louis J. Lefkowitz, et al.

DATE	PROCEEDINGS
Mar. 2	Filed Complaint & request for Three Judge District Court
24	“ Deft., Lefkowitz, Answer
30	“ Deft., Tutuska, Answer
Apr. 16	Motion by Deft., Dillon to dismiss complaint—submitted
June 8	Filed Decision & Order granting Deft., Dillon’s motion to dismiss complaint as to him—Curtin, J.
10	“ Pltfs’ Affidavit of M. Russell Turley and Robert H. Stievater
10	“ Pltfs’ Notice of Motion for an order impanelling a three-judge court and for summary judgment—ret. 7/2/71—*adj. 7/16/71**
21	“ Defts., Lefkowitz & Rockefeller, Notice of Motion & Motion for Summary Judgment—ret. 7/2/71—*adj. 7/16/71**
July 2	“ Deft., B. John Tutuska, Notice of Motion & Motion for Summary Judgment—ret. 7/2/71—*Court informs attys., they will be notified if oral argument is necessary—adj. 7/16/71—**Return date for oral argument, if necessary. No appearances. All motions considered by the court to be submitted
Nov. 24	“ Deft., Michael F. Dillon, Affidavit, Notice of Motion and Motion to Dismiss complaint—ret. 4/2/71
24	“ Pltfs’. Answering Affidavit

Relevant Docket Entries.

DATE	PROCEEDINGS
1971	
24	“ Decision & Order requesting that the US Court of Appeals, 2nd Circuit, convene a three-judge court—Curtin, J.
Dec. 2	“ Order, w/attached Order of Designation of Judges, convening a three-judge panel on 1/10/72, etc.—Curtin, J
1972	
Jan. 10	“ Deft., B. John Tutuska, Memorandum
10	Three Judge Court convenes—Hon. Wilfred Feinberg, Hon. John O. Henderson, & Hon. John T. Curtin—Argument on motion by Pltfs. for judgment declaring Sec. 103-A & 103-B of New York General Municipal Law & Sections 2601 & 2602 of New York Public Authorities Law is violative of Pltfs. Fifth Amendment Rights & a Permanent Injunction against the operation of the above statutes—Decision reserved
May 1	Filed Decision & Order declaring Sections 103-a & 103-b of New York's General Municipal Law & Sections 2601 & 2602 of the New York Public Authorities Law unconstitutional and enjoining the Defts., from their further enforcement—three Judge Court (Feinberg, USCJ & Henderson & Curtin, DJ)
June 29	Filed Notice of Appeal of Defts. Lefkowitz and Rockefeller with affidavit of service (appeal to U.S. Sup. Ct.)
30	“ Notice of Appeal of Deft. Tutuska with affidavit of service (appeal to U.S. Sup. Ct.)
Feb. 26	Filed certified copy of order of U.S. Supreme Court noting probable jurisdiction

Complaint.

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF NEW YORK.

CIV—1971-80

M. RUSSELL TURLEY
1030 E. River Road
Grand Island, New York

ROBERT H. STIEVATER
8347 Sisson Highway
Eden, New York

Plaintiffs

—VS—

LOUIS J. LEFKOWITZ
The Capitol
Albany, New York

NELSON A. ROCKEFELLER
The Capitol
Albany, New York

B. JOHN TUTUSKA
Erie County Office Building
Buffalo, New York

Michael F. Dillon
Erie County Hall
Buffalo, New York

Defendants

I

This is an action for declaratory judgment under the provisions of 28 USC § 2201, seeking to declare uncon-

Complaint.

stitutional the following New York State Statutes:

(1) Chapter 605, § 2 of the Laws of 1959, as amended by Chapter 94 of the Laws of 1960 and Chapter 1032, § 1 of the Laws of 1968 and Chapter 694, § 4 of the Laws of 1970, codified as General Municipal Law Article 4, § 103-a, and entitled "Ground for cancellation of contract by municipal corporations and fire districts."

(2) Chapter 605, § 2 of the Laws of 1959 as amended by Chapter 94 of the Laws of 1960, Chapter 606, § 3 of the Laws of 1960, Chapter 420, § 125 of the Laws of 1968, Chapter 1032, § 2 of the Laws of 1968, Chapter 694, § 5 of the Laws of 1970, codified as General Municipal Law, Article 5-a, § 103-b entitled "Disqualification to contract with municipal corporations and fire districts."

(3) Chapter 605, § 3 of the Laws of 1959 as amended by Chapter 606, § 5 of the Laws of 1960, Chapter 1032, § 4 of the Laws of 1968 and Chapter 694, § 7 of the Laws of 1970 codified as Public Authorities Law, title 3-A, § 2601 entitled "Ground for cancellation of contract by public authority."

(4) Chapter 605, § 3 of the Laws of 1959, as amended by Chapter 606, § 6 of the Laws of 1960, Chapter 420, § 211 of the Laws of 1968, Chapter 1032, § 5 of the Laws of 1968 and Chapter 694, § 8 of the Laws of 1970, codified as Public Authorities Law title 3-A, § 2602 entitled "Disqualification to contract with public authority."

That the above entitled statutes are set out in full in Exhibit "A" annexed hereto and made a part hereof. For brevity, said statutes will hereinafter be referred to as "General Municipal Law § 103-a, General Municipal Law

Complaint.

§ 103-b, Public Authorities Law § 2601 and Public Authorities Law § 2602."

This action is also brought for a permanent injunction restraining the enforcement, operation and execution of said statutes and any and all regulations or rules which may have been promulgated pursuant thereto.

This action is upon the ground that said statutes are unconstitutional under the Constitution of the United States of America and to enjoin the enforcement of said statutes against plaintiffs herein. The matter in controversy involves rights of value in excess of \$10,000.00. Jurisdiction of the Court as asserted under 28 U.S.C. §§ 1331, 1343(3) and a hearing before the Three Judge Court is prayed for pursuant to the provisions of 28 U.S.C. § 2281.

II

A. The parties plaintiff are each residents of the County of Erie, and State of New York. Each plaintiff is a duly licensed architect under the laws of the State of New York and each have been employed and active in the field of architecture for various municipalities and state and county agencies in the State of New York for many years past and each have reasonable expectation of employment by the State of New York and county agencies within the State of New York as architects in the future.

III

A. Defendant, Louis J. Lefkowitz, is now, and at all times material hereto has been, a resident of the State of New York and is Attorney General of the State of New York; and is the principal executive officer in charge of the enforcement of the Laws of the State of New York

Complaint.

including specifically General Municipal Law § 103-a, General Municipal Law § 103-b; Public Authorities Law § 2602 and Public Authorities Law § 2601, the statutes annexed hereto as Exhibit "A".

B. The defendant, Nelson A. Rockefeller, is the Governor of the State of New York with the general powers of that office including the power to direct the activities of the Attorney General as aforesaid.

C. The defendant, B. John Tutuska, is the County Executive of the County of Erie, a resident of the County of Erie and has the general powers of that office including the power to interfere with various contracts involving plaintiffs or firms in which plaintiffs are interested.

D. The defendant, Michael F. Dillon, is a resident of the County of Erie and is the District Attorney of the County of Erie conducting Grand Jury proceedings within that County and as such officer of the State of New York is charged under the statutes above referred to with the duty of notifying various state, county and municipal bodies of a refusal to sign a waiver of immunity as more fully discussed hereinafter.

IV

A. That heretofore plaintiffs were served with subpoenas by defendant, Michael F. Dillon, to appear before a certain Grand Jury at the Erie County Hall, Buffalo, New York, on or about February 8, 1971 in a proceeding entitled "The People of the State of New York—against—John Doe, et al."

B. That upon appearing at the office of the District Attorney of Erie County on February 8, 1971, and before

Complaint.

being called before said Grand Jury, each of the above named plaintiffs was presented with "Waivers of Immunity," in the form as shown by Exhibits "B" and "C" annexed hereto and made a part hereof.

C. That, as appears from said Exhibits, the Grand Jury of the County of Erie, then in session, was investigating various charges of conspiracy, bribery and larceny and "other matters of every nature whatsoever appertaining thereto." The State of New York Penal Law sections referred to in said "Waiver of Immunity" are set forth in full in Exhibit "D" annexed hereto and made a part hereof.

D. After request of Assistant District Attorney of Erie County, John J. Honan, that the plaintiffs sign such "Waivers of Immunity", each plaintiff then and there declined to sign such waivers under the rights granted to them under Amendments V and XIV, Section 1 of the United States Constitution, that, as a direct consequence of the execution of such Waiver of Immunity, plaintiffs would be deemed to have waived their right not to be compelled in a criminal case to be a witness against themselves.

E. Thereafter, defendant, Michael F. Dillon, District Attorney of Erie County, has, upon information and belief, caused to be delivered various letters and other communications to the County of Erie, State of New York, Attorney General of the State of New York and various other State, County and municipal agencies in the State of New York with the intent of enforcement of General Municipal Law §§ 103-a, 103-b, Public Authorities Law § 2601 and Public Authorities Law § 2602.

V

A. That defendant, B. John Tutuska, as County Executive of the County of Erie may threaten to cancel or ter-

Complaint.

minate various contracts between the County of Erie and the partnership of which plaintiffs were members on the grounds of General Municipal Law § 103-a.

B. That the plaintiffs desire to seek employment by the State of New York, County of Erie and various other municipalities as architects and to enter into contracts with the State of New York, County of Erie and various municipalities in their capacities as architects or as members of a firm of architects and engineers or as directors or officers of a professional corporation of architects and engineers and are or may be prevented from doing so without violating the provisions of General Municipal Law § 103-b and Public Authorities Law § 2602 prohibiting such employment or contracts for a period of five years after the date of refusal to sign a Waiver of Immunity or, in this case, five years from February 8, 1971. By reason thereof, plaintiffs are irreparably damaged each in a sum in excess of Ten Thousand Dollars.

VI

A. The aforesaid statutes, General Municipal Law § 103-a, General Municipal Law § 103-a, Public Authorities Law § 2601 and Public Authorities Law § 2602, attached as Exhibit "A" are unconstitutional under the Constitution of the United States in that they tend to compel plaintiffs and other members of the public to be witnesses against themselves in criminal proceedings before grand juries.

Therefore, the individual plaintiffs and all those similarly situated who may be called before such grand jury proceedings are deprived of the protection granted them under Amendment V of the United States Constitution relating to self-incrimination in a criminal proceeding.

Complaint.

VII

A. The defendants and each of them, by reason of the aforesaid statutes, General Municipal Law § 103-a, General Municipal Law § 103-b, Public Authorities Law § 2601 and Public Authorities Law § 2602, threaten to nullify the contractual rights of the individual plaintiffs and a partnership of which they are now members; furthermore, by reason of said statutes, said defendants threaten to impose severe penalties and sanctions against plaintiffs if they attempt to submit bids or receive awards or enter into any contracts with the State of New York or any political subdivision thereof.

VIII

A. The plaintiffs, being threatened with loss of federally guaranteed rights except upon severe penalties of fines and civil suits, have no adequate remedy at law, and unless this Court grants relief as prayed, will be deprived of their lawful rights for an indefinite period of time.

WHEREFORE, it is prayed that:

1. A Three Judge District Court be convened to hear and determine this cause pursuant to the authority and requirement of 28 USC § 2281 and 2284;
2. That General Municipal Law § 103-a, General Municipal Law § 103-b, Public Authorities Law § 2601 and Public Authorities Law § 2602, all statutes of the State of New York, attached hereto as Exhibit "A" be declared unconstitutional and null and void;
3. That the defendants, their successors in office and all persons acting as their agents, officers, and servants or under their direction or authority, be permanently en-

Exhibit A.

joined and restrained from taking any action to enforce said statutes or any regulations promulgated thereunder;

4. For such other and further relief as the Court may deem proper.

ROBINSON & SPELLER
Attorneys for Plaintiffs

By: RICHARD O. ROBINSON
Richard O. Robinson
Office & P.O. Address
606 Liberty Bank Building
Buffalo, New York 14202

Exhibit A.

GENERAL MUNICIPAL LAW

Section 103-a. Ground for cancellation of contract by municipal corporations and fire districts:

A clause shall be inserted in all specifications or contracts made or awarded by a municipal corporation or any public department, agency or official thereof on or after the first day of July, nineteen hundred fifty-nine or by a fire district or any agency or official thereof on or after the first day of September, nineteen hundred sixty, for work or services performed or to be performed, or goods sold or to be sold, to provide that upon the refusal of a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any

Exhibit A.

transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

(a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation, or fire district, or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that

(b) any and all contracts made with any municipal corporation or any public department, agency or official thereof on or after the first day of July, nineteen hundred fifty-nine or with any fire district or any agency or official thereof on or after the first day of September, nineteen hundred sixty, by such person, and by any firm, partnership, or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the municipal corporation or fire district without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the municipal corporation or fire district for goods delivered or work done prior to the cancellation or termination shall be paid.

The provisions of this section as in force and effect prior to the first day of September, nineteen hundred sixty, shall apply to specifications or contracts made or awarded by a municipal corporation on or after the first day of July, nineteen hundred fifty-nine, but prior to the first day of September, nineteen hundred sixty.

Exhibit A.

Section 103-b. Disqualification to contract with municipal corporations and fire districts:

Any person, who, when called before a grand jury, head of a state department, temporary state commission or other state agency, head of a city department or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority, or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district, or with any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the provisions of section one hundred three-c of this article.

It shall be the duty of the officer conducting the investigation before the grand jury, the head of a state department, the chairman of the temporary state commission or other state agency, the head of a city department or other city agency before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership, or corporation of which the person so refusing is known to be a member, partner, officer or director, to the commissioner of transportation of the state of New York and the appropriate departments, agencies and officials of the state, political subdivisions thereof or public authorities with whom the person so refusing and any firm, partner-

Exhibit A.

ship or corporation of which he is a member, partner, director or officer, is known to have a contract. However, when such refusal occurs before a body other than a grand jury, notice of refusal shall not be sent for a period of ten days after such refusal occurs. Prior to the expiration of this ten day period, any person, firm, partnership or corporation which has become liable to the cancellation or termination of a contract or disqualification to contract on account of such refusal may commence a special proceeding at a special term of the supreme court, held within the judicial district in which the refusal occurred, for an order determining whether the questions in response to which the refusal occurred were relevant and material to the inquiry. Upon the commencement of such proceeding, the sending of such notice of refusal to answer shall be subject to order of the court in which the proceeding was brought in a manner and on such terms as the court may deem just. If a proceeding is not brought within ten days, notice of refusal shall thereupon be sent as provided herein.

PUBLIC AUTHORITIES LAW**Article 9—General Provisions****(Title 3-A—Contracts of Public Authorities)**

Section 2601. Ground for cancellation of contract by public authority:

A clause shall be inserted in all specifications or contracts hereafter made or awarded by any public authority or by any official of any public authority created by the state or any political subdivision, for work or services performed or to be performed or goods sold or to be sold, to provide that upon the refusal by a person, when called before a grand jury, head of a state department, temporary

Exhibit A.

state commission or other state agency, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

(a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that

(b) any and all contracts made with any public authority or official thereof, since the effective date of this law, by such person and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation or termination shall be paid.

Section 2602. Disqualification to contract with public authority:

Any person who, when called before a grand jury, head of a state department, temporary state commission or other state agency, head of a city department, or other city agency, which is empowered to compel the attendance of

Exhibit A.

witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, and any firm, partnership or corporation, of which he is a member, partner, director, or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or any official of any public authority created by the state or any political subdivision, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the provisions of section twenty-six hundred three of this title.

It shall be the duty of the officer conducting the investigation before the grand jury, the head of a state department, the chairman of the temporary state commission or other state agency, the head of a city department or other city agency before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer or director, to the commissioner of transportation of the state of New York, or the commissioner of general services as the case may be, and the appropriate departments, agencies and officials of the state, political subdivisions thereof or public authorities with whom the persons so refusing any any firm, partnership or corporation of which he is a member, partner, director or officer, is known to have a contract. However, when such refusal occurs before a body other than a grand jury, notice of refusal shall not be sent for a period of ten days after such refusal occurs. Prior to the expiration of

Exhibit B.

this ten day period, any person, firm, partnership or corporation which has become liable to the cancellation or termination of a contract or disqualification to contract on account of such refusal may commence a special proceeding at a special term of the supreme court, held within the judicial district in which the refusal occurred, for an order determining whether the questions in response to which the refusal occurred were relevant and material to the inquiry. Upon the commencement of such proceeding, the sending of such notice of refusal to answer shall be subject to order of the court in which the proceeding was brought in a manner and on such terms as the court may deem just. If a proceeding is not brought within ten days, notice of refusal shall thereupon be sent as provided herein.

Exhibit B.**COUNTY COURT,****ERIE COUNTY.****Pre-Indictment No. 36,369**

THE PEOPLE OF THE STATE OF NEW YORK**against****JOHN DOE, et al**

I have been advised by Assistant District Attorney JOHN J. HONAN that the Grand Jury of the County of Erie, now in session, is investigating a charge of Conspiracy (Sections 105.00, 105.05, 105.10, 105.15 of the Penal Law); Bribery

Exhibit B.

(Sections 200, 200.10, 200.20, 200.25, 200.30, 200.35 200.45, 200.50 of the Penal Law) ; Larceny (Article 155 of the Penal Law), and other matters of every nature whatsoever appertaining thereto. I am further advised that such charge and investigation may involve me.

I have also been advised by Mr. John J. Honan that I need not appear or give evidence before said Grand Jury concerning the aforesaid matters unless I wish to do so; that I am entitled to consult counsel and that if I do testify before said Grand Jury, any testimony given by me must be voluntary on my part.

No one has made any threats or promises to me whatsoever in connection with my appearance or any testimony that I may give before the Grand Jury. I have also been advised by Mr. JOHN J. HONAN that anything I may say or testify to before said Grand Jury in said investigation can be used against me on the prosecution of any charge or indictment concerning the transactions about which I may testify.

And, with full understanding of my declarations herein, and of my own free will, I hereby expressly waive any immunity that might otherwise come to me because or on account of my appearance or any testimony that I may give before said Grand Jury in connection with said investigation.

ROBERT H. STIEVATER

Dated: Buffalo, N.Y., the 8th day of February, 1971.
(Acknowledged, February 8, 1971.)

Exhibit C.**COUNTY COURT,
ERIE COUNTY.**

Pre-Indictment No. 36,369

THE PEOPLE OF THE STATE OF NEW YORK
against
JOHN DOE, et al

I have been advised by Assistant District Attorney, JOHN J. HONAN that the Grand Jury of the County of Erie, now in session, is investigating charges of Conspiracy (Sections 105.00, 105.05, 105.10, 105.15, of the Penal Law); Bribery (Sections 200, 200.10, 200.20, 200.25, 200.30, 200.35, 200.45, 200.50 of the Penal Law); Larceny (Article 155 of the Penal Law), and other matters of every nature whatsoever appertaining thereto. I am further advised that such charge and investigation may involve me.

I have also been advised by Mr. JOHN J. HONAN that I need not appear or give evidence before said Grand Jury concerning the aforesaid matters unless I wish to do so; that I am entitled to consult counsel and that if I do testify before said Grand Jury, any testimony given by me must be voluntary on my part.

No one has made any threats or promises to me whatsoever in connection with my appearance or any testimony that I may give before the Grand Jury. I have also been advised by Mr. JOHN J. HONAN that anything I may say or testify to before said Grand Jury in said investigation can be used against me on the prosecution of any charge or in-

Exhibit D.

dictment concerning the transactions about which I may testify.

And, with full understanding of my declarations herein, and of my own free will, I hereby expressly waive any immunity that might otherwise come to me because or on account of my appearance or any testimony that I may give before said Grand Jury in connection with said investigation.

M. RUSSELL TURLEY

Dated: Buffalo, N.Y., the 8th day of February, 1971.

(Acknowledged, February 8, 1971.)

Exhibit D.

PENAL LAW

Section 105.00—Conspiracy in the fourth degree:

A person is guilty of conspiracy in the fourth degree when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or causes the performance of such conduct.

Conspiracy in the fourth degree is a class B misdemeanor. * * *

Section 105.05—Conspiracy in the third degree:

A person is guilty of conspiracy in the third degree when, with intent that conduct constituting a felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

Conspiracy in the third degree is a class A misdemeanor.
* * *

*Exhibit D.**Section 105.10—Conspiracy in the second degree:*

A person is guilty of conspiracy in the second degree when, with intent that conduct constituting a class B or class C felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

Conspiracy in the second degree is a class E felony. * * *

Section 105.15—Conspiracy in the first degree:

A person is guilty of conspiracy in the first degree when, with intent that conduct constituting murder or kidnapping in the first degree be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

Conspiracy in the first degree is a class C Felony. * * *

Section 200.00—Bribery

A person is guilty of bribery when he confers, or offers or agrees to confer, any benefit upon a public servant upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribery is a class D felony. * * *

Section 200.10—Bribe receiving:

A public servant is guilty of bribe receiving when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribe receiving is a class D felony. * * *

*Exhibit D.**Section 200.20—Rewarding official misconduct:*

A person is guilty of rewarding official misconduct when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant.

Rewarding official misconduct is a class E felony. . . .

Section 200.25—Receiving reward for official misconduct:

A public servant is guilty of receiving reward for official misconduct when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant.

Receiving reward for official misconduct is a class E felony. . . .

Section 200.30—Giving unlawful gratuities:

A person is guilty of giving unlawful gratuities when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.

Giving unlawful gratuities is a class A misdemeanor. . . .

Section 200.35—Receiving unlawful gratuities:

A public servant is guilty of receiving unlawful gratuities when he solicits, accepts or agrees to accept any benefit for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.

Receiving unlawful gratuities is a class A misdemeanor. . . .

*Exhibit D.**Section 200.45—Bribe giving for public office:*

A person is guilty of bribe giving for public office when he confers, or offers or agrees to confer, any money or other property upon a public servant or a party officer upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

Bribe giving for public office is a class D felony. * * *

Section 200.50—Bribe receiving for public office:

A public servant or a party officer is guilty of bribe receiving for public office when he solicits, accepts or agrees to accept any money or other property from another person upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

Bribe receiving for public office is a class D felony. * * *

Article 155.—Larceny; definitions of terms:

The following definitions are applicable to this title:

1. "Property" means any money, personal property, real property, thing in action, evidence of debt or contract, or any article, substance or thing of value.

2. "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.

3. "Deprive." To "deprive" another of property means (a) to withhold it or cause it to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him, or (b) to dispose of the property in

Exhibit D.

such manner or under such circumstances as to render it unlikely that an owner will recover such property.

4. "Appropriate." To "appropriate" property of another to oneself or a third person means (a) to exercise control over it, or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit, or (b) to dispose of the property for the benefit of oneself or a third person.

5. "Owner." When property is taken, obtained or withheld by one person from another person, an "owner" thereof, means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.

A person who has obtained possession of property by theft or other illegal means shall be deemed to have a right of possession superior to that of a person who takes, obtains or withholds it from him by larcenous means.

A joint or common owner of property shall not be deemed to have a right of possession thereto superior to that of any other joint or common owner thereof.

In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest therein, even if legal title lies with the holder of the security interest pursuant to a conditional sale contract or other security agreement.

6. "Secret scientific material" means a sample, culture, micro-organism, specimen, record, recording, document, drawing or any other article, material, device or substance which constitutes, represents, evidences, reflects, or records a scientific or technical process, invention or formula or any

Exhibit D.

part or phase thereof, and which is not, and is not intended to be, available to anyone other than the person or persons rightfully in possession thereof or selected persons having access thereto with his or their consent, and when it accords or may accord such rightful possessors an advantage over competitors or other persons who do not have knowledge or the benefit thereof. * * *

7. "Credit card" means any instrument or article defined as a credit card in section five hundred eleven of the general business law.

8. "Service" includes, but is not limited to, labor, professional service, transportation service, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water. A ticket or equivalent instrument which evidences a right to receive a service is not in itself service but constitutes property within the meaning of subdivision one. * * *

Lefkowitz Answer.

[S A M E T I T L E]

ANSWER TO COMPLAINT

Defendant Louis J. Lefkowitz, *pro se*, and defendant Nelson A. Rockefeller, by his attorney, Louis J. Lefkowitz, Attorney General of the State of New York, answering the complaint herein:

1. Admit the allegations contained in paragraph numbered "I" and "III".

2. Deny the allegations contained in paragraphs numbered "VI" and "VIII".

3. Deny information sufficient to form a belief as to the allegations contained in paragraphs numbered "II", "V" and "VII".

4. Admit all of paragraph numbered "IV", except deny that part in "D" which reads "that, as a direct consequence of the execution of such Waiver of Immunity, plaintiffs would be deemed to have waived their right not to be compelled in a criminal case to be a witness against themselves".

FIRST DEFENSE

5. The Court lacks jurisdiction of the subject matter of the action.

SECOND DEFENSE

6. The complaint fails to state a claim against defendants upon which relief can be granted.

Tutuska Answer.

WHEREFORE, defendants demand that the complaint herein be dismissed together with the costs and disbursements of this action.

DATED: Albany, New York
March 22, 1971

Signed:

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for State
Defendants

By s/ DOUGLAS S. DALES, JR.
DOUGLAS S. DALES, JR.
Assistant Attorney General

Tutuska Answer.

Defendant, B. John Tutuska, by his attorney, Robert E. Casey, Jr., County Attorney for the County of Erie, answering the complaint herein:

FIRST: Admits the allegations contained in paragraphs numbered "I", "III", "IV-E." and "V-A."

SECOND: Denies the allegations contained in paragraphs numbered "VI" and "VIII".

THIRD: Denies information sufficient to form a belief as to the allegations contained in paragraphs numbered "II", "IV" and "V".

Tutuska Answer.

FOURTH: Admits the allegation of paragraph numbered "VII" which states that the defendant threatens to nullify the contractual rights of the individual plaintiffs and a partnership of which they are now members and denies each and every other allegation contained therein.

FIRST DEFENSE

FIFTH: The Court lacks jurisdiction of the subject matter of the action.

SECOND DEFENSE

SIXTH: The complaint fails to state a claim against defendants upon which relief can be granted.

WHEREFORE, defendants demand that the complaint herein be dismissed together with the costs and disbursements of this action.

Dated: Buffalo, New York
March 29, 1971

Signed:

ROBERT E. CASEY, JR.
County Attorney for the County of
Erie, and Attorney for the
Defendant, B. John Tutuska

By: /s/ JUSTYN E. MILLER
Justyn E. Miller
Assistant County Attorney

Dillon Motion to Dismiss.

PLEASE TAKE NOTICE, that upon the complaint herein, the undersigned will move this Court, in the United States Court House, City of Buffalo, New York, on the 2nd day of April, 1971, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order dismissing the Complaint herein, on the ground that the same fails to state a claim against the defendant Michael F. Dillon, upon which relief can be granted.

Dated: Buffalo, New York
March 26th, 1971

Yours, etc.

MICHAEL F. DILLON
District Attorney of Erie County

PETER J. NOTARO
Assistant District Attorney
Chief, Appeals Bureau, Of Counsel

To:

RICHARD O. ROBINSON, Esq.
Attorney for Plaintiffs

Motion to Dismiss Complaint.

TO THE HON. JOHN T. CURTIN, JUDGE OF
THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK:

The defendant Michael F. Dillon moves this Court under Rule 12(b)(6), Rules of Civil Procedure, to dismiss the action as to the defendant Michael F. Dillon because the Complaint fails to state a claim against said defendant upon which relief can be granted, as more particularly appears from the affidavit attached hereto.

Dated: Buffalo, New York
March 26th, 1971

Yours, etc.

MICHAEL F. DILLON
District Attorney of Erie County

PETER J. NOTARO
Assistant District Attorney
Chief, Appeals Bureau, Of Counsel
200 Erie County Hall
25 Delaware Avenue
Buffalo, New York 14202

TO: RICHARD O. ROBINSON, Esq.
Attorney for Plaintiffs
606 Liberty Bank Building
Buffalo, New York 14202

Affidavit of Michael F. Dillon, in Support of Motion.

MICHAEL F. DILLON, being duly sworn, deposes and says:

That he is the defendant in the above entitled action.

That the said proceeding arises out of the fact that the plaintiffs herein, while under contract with the County of Erie, were subpoenaed to testify before an Erie County Grand Jury on or about February 8th, 1971.

That plaintiffs herein, on or about February 8th, 1971, were offered Waivers of Immunity forms to execute and that they refused to do so on or about said date.

That as a result of their refusal to sign Waivers of Immunity, your deponent was compelled by virtue of Section 103-b of the General Municipal Law of the State of New York to notify the Commissioner of Transportation of the State of New York and others of such refusals.

The plaintiffs now seek in their Complaint declaratory judgment ruling upon the constitutionality of the aforementioned Section of the General Municipal Law of the State of New York as well as other sections. They also seek in their Complaint to permanently enjoin the enforcement, operation and execution of the statutes and regulations or rules which have been promulgated pursuant to those statutes.

It is the position of the defendant Michael F. Dillon that the aforesaid notification to the Commissioner of Transportation of the State of New York and others is the sum and substance of any duties imposed upon him attendant to the plaintiffs' refusals, and in view of this there is nothing further that the Laws of the State of New York allow your deponent to do insofar as the enforcement of any of the statutes which pertain to said refusals.

That, therefore, this Court is being asked by the plaintiffs to permanently enjoin your deponent from participating in actions which the law specifically does not allow your deponent to participate in, that is the enforcement, opera-

Affirmation of Richard O. Robinson.

tion and execution of the various statutes set forth in the Complaint.

WHEREFORE, your deponent respectfully prays for an order dismissing the Complaint herein as against the defendant Michael F. Dillon, on the basis that the Complaint does not state a claim against the defendant Michael F. Dillon, upon which relief can be granted.

(Sworn to by Michael F. Dillon, March, 26, 1971.)

Affirmation of Richard O. Robinson, in Opposition to Dillon Motion.

RICHARD O. ROBINSON, affirms and states:

1. That he is an attorney at law and is of counsel for the plaintiffs in the above entitled action.

2. That this motion has been brought by the District Attorney of Erie County to dismiss the action as to him on the grounds that the question of notification of political subdivisions is moot.

3. Section 103-b of the General Municipal Law states, in part, as follows:

• • •

"It shall be the duty of the officer conducting the investigation before the Grand Jury before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer, or director, to the Superintendent of Public Works of the State of New York and the

Affirmation of Richard O. Robinson.

appropriate departments, agencies and officials of the State, political subdivisions thereof or public authorities with whom the person so refusing, and any firm, partnership, or corporation of which he is a member, partner, director or officer, is known to have a contract."

4. Upon information and belief, the source of deponent's information being a copy of a letter from District Attorney Michael F. Dillon to various persons and bodies, a notice of the refusal of M. Russell Turley and Robert H. Stievater to give testimony before a Grand Jury was sent to the following persons:

Louis J. Lefkowitz, Attorney General, State Capital, Albany, New York.

Commissioner of Transportation of the State of New York

Hon. B. John Tutuska, Erie County Executive, 95 Franklin Street, Buffalo, N. Y.

Hon. Robert E. Casey, Jr., Erie County Attorney, 25 Delaware Avenue, Buffalo, N. Y.

Erie County Legislature, 25 Delaware Avenue, Buffalo, New York.

Turley, Stievater, Walker, Mauri and Assoc., 807 Elmwood Avenue, Buffalo, New York.

5. Therefore, in fact, no notice has been sent to the Superintendent of Public Works of the State of New York and, to the direct knowledge of deponent, notices have not been forwarded to certain political subdivisions with whom the firm of Turley, Stievater, Walker, Mauri and Associates has been acting.

*Decision and Order Granting Dillon
Motion to Dismiss.*

6. In view of the circumstances of this motion, however, deponent respectfully requests that an order be entered, pendente lite, restraining Michael F. Dillon, District Attorney of Erie County, from sending out further and additional notices in regard to the matters concerned in this action.

Affirmed to be true pursuant to the penalties of perjury this 5th day of April, 1971.

RICHARD O. ROBINSON

**Decision and Order Granting Dillon Motion
to Dismiss.**

APPEARANCES: Robinson & Speller (Richard O. Robinson, of counsel), Buffalo, New York, for the Plaintiffs.

Michael F. Dillon, District Attorney of Erie County (Peter J. Notaro, of Counsel), Buffalo, New York, for Defendant Dillon.

Plaintiffs have brought an action seeking a judgment declaring Sections 103-a and 103-b of the New York General Municipal Law and Sections 2601 and 2602 of the New York Public Authorities Law unconstitutional. Since plaintiffs further seek a permanent injunction against the enforcement of the above statutes, they have applied for the convening of a three-judge court pursuant to Title 28, United States Code, Sections 2281 and 2284.

By motion pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, defendant Dillon requests that the action be dismissed as to him on the ground of mootness.

To rule on this motion, a brief review of the facts, as alleged by plaintiffs, is necessary. Plaintiffs are licensed

*Decision and Order Granting Dillon
Motion to Dismiss.*

architects employed in the past by various New York municipalities and state and county agencies. On February 8, 1971, plaintiffs refused to sign waivers of immunity upon being called to testify before a grand jury conducted by defendant Dillon. As required by Section 103-b of the New York General Municipal Law and Section 2602 of the New York Public Authority Law, defendant Dillon immediately notified the Commissioner of Transportation of the State of New York and others of plaintiffs' refusal.

Having completed his obligations under the above statutes, defendant Dillon argues the plaintiffs' action is moot as to him. Plaintiffs counter that defendant Dillon is also required by the above cited state statutes to notify the Superintendent of Public Works of the State of New York, that he has not done so, and therefore the action is not moot. Moreover, plaintiffs argue, defendant Dillon has not yet sent notices to certain political subdivisions with whom plaintiffs' firm is engaged.

In 1968, the New York Legislature amended the notification provisions of Sections 103-b and 2602 by substituting "commissioner of transportation" for "superintendent of public works." See Laws of New York, Chapter 420, Section 125 (1968). Plaintiffs' first point is therefore clearly wrong.

Both in his motion papers and in oral argument before this court, defendant Dillon has represented that he has completed his ministerial notification obligations and that he will take no further action in this respect. Accordingly, plaintiffs' second point is also without merit.

The motion of defendant Dillon is granted.

So ordered.

JOHN T. CURTIN
United States District Judge

Dated: June 8, 1971.

**Motion for Three-Judge Court and
Summary Judgment.**

SIRS:

PLEASE TAKE NOTICE that upon the affidavits of M. Russell Turley and Robert H. Stievater, duly sworn to and upon the pleadings and proceedings heretofore had herein, a motion will be made at a term of the United States District Court for the Western District of New York at Part II, sixth floor of the U.S. Courthouse, Buffalo, New York, on the 2nd day of July, 1971 at 10:00 a.m., or as soon thereafter as counsel can be heard, for an order impaneling a three-judge court pursuant to Section 2284 of Title 28 of the United States Code and for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and for such other and further relief as to the Court may seem proper under the circumstances.

Yours, etc.,

ROBINSON & SPELLER
Attorneys for Plaintiffs

To:

MICHAEL F. DILLON
District Attorney of Erie County

PETER J. NOTARO
Assistant District Attorney
Chief, Appeals Bureau, of Counsel

ROBERT E. CASEY, JR.
County Attorney for the County
of Erie and Attorney for the
Defendant B. John Tutuska

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for State Defendants

Turley and Stievater Affidavits.

STATE OF NEW YORK	} ss.:
COUNTY OF ERIE	
CITY OF BUFFALO	

M. RUSSELL TURLEY and ROBERT H. STIEVATER, each being duly and severally sworn, depose and say:

1. That they are the plaintiffs in the above entitled action and are each architects duly licensed to practice their profession in the State of New York.

2. That on February 8, 1971, pursuant to subpoena, they each appeared at the office of John J. Honan, Assistant District Attorney for the County of Erie, New York, and were presented with forms of "Waiver of Immunity" as shown in Exhibits "A" and "B" annexed hereto and made a part hereof.

3. That they each then and there refused to sign such Waiver of Immunity.

4. Thereafter, upon information and belief, on February 9, 1971, the District Attorney of Erie County, Michael F. Dillon, caused to be forwarded to the Attorney General of the State of New York, the Erie County Executive and various other parties notifying such parties of the refusal of deponents to execute a Waiver of Immunity to testify before a Grand Jury.

5. That deponents are presently members of a partnership which has contracts with certain municipalities. These contracts are subject to cancellation should such municipalities be notified of deponents' refusal to execute

Turley and Stievater Affidavits.

a Waiver of Immunity, pursuant to the provisions of the General Municipal Law of the State of New York.

6. In the pursuit of their architectural profession in the past, each of the deponents and firms with which they have been associated have sought out contracts with various municipalities and agencies and desire to do so in the future in order to continue in the active practice of their profession. They are prevented from doing so, however, by reason of the so-called disqualification provisions of Section 103-b of the General Municipal Law.

7. Further, upon information and belief, even if deponents should attempt to secure employment from a municipal body or governmental subdivision, said Section 103-b of the General Municipal Law of the State of New York will have the effect of preventing the employment of deponents.

8. That, upon information and belief, the defendant, B. John Tutuska, the Erie County Executive, has, or is about to, cancel a certain contract between a firm in which deponents are associated and the County of Erie relating to the architectural design of a dome stadium in the County of Erie.

9. It is submitted that by reason of the foregoing, the various statutes cited in the complaint herein and the actions taken, or which are about to be taken, by the District Attorney of Erie County and the Erie County Executive, B. John Tutuska, are punitive in nature punishing deponents for the exercise of their constitutional rights under the Fifth Amendment of the United States Constitution.

10. That no previous application has been made for this or similar relief herein.

Turley and Stievater Affidavits.

WHEREFORE, dependents pray:

(a) That a three-judge district court be convened to hear and determine this cause;

(b) That said three-judge district court grant summary judgment to plaintiffs herein: (1) Declaring General Municipal Law, Section 103-a, General Municipal Law Section 103-b, Public Authorities Law, Section 2601 and Public Authorities Law, Section 2602, all statutes of the State of New York, unconstitutional and null and void; and (2) Enjoining and restraining the defendants herein from taking any action to enforce said statutes or any regulations promulgated thereunder; and for such other and further relief as such Court may deem proper under the circumstances.

(Sworn to by M. Russell Turley and Robert H. Stievater,
May 26, 1971.)

Letter, Annexed to Foregoing Affidavit.

OFFICE OF THE
DISTRICT ATTORNEY
Erie County Hall
Buffalo, N. Y. 14202

MICHAEL F. DILLON
District Attorney

JOHN J. HONAN
First Assistant

February 9, 1971.

Hon. Louis J. Lefkowitz, Attorney General, State Capital,
Albany, N.Y.

Commissioner of Transportation of the State of New York

Hon. B. John Tutuska, Erie County Executive, 95 Franklin
St. Buffalo.

Hon. Robert E. Casey, Jr. Erie County Attorney, 25 Dela-
ware Avenue, Bflo.

Erie County Legislature, 25 Delaware Avenue, Buffalo, N.Y.

Turley, Stievater, Walker, Mauri & Associates, 807 Elm-
wood Avenue, Bflo.

Gentlemen:

Please be advised that the following persons were sub-
poenaed to appear before the January, 1971 Hold-over Erie
County Grand Jury to testify with regard to an investiga-
tion concerning transactions and contracts that they had
with the County of Erie, a political subdivision of the State
of New York:

J. Lloyd Walker
M. Russell Turley
Robert H. Stievater

Letter, Annexed to Foregoing Affidavit.

Pursuant to said subpoenas they were individually asked to sign a Waiver of Immunity against subsequent criminal prosecution and each refused. Mr. Walker was nonetheless called before the Grand Jury and has testified with immunity. Mr. Turley and Mr. Stievater, upon their respective refusals to sign such a waiver, were excused and have not been called before the Grand Jury.

Your attention is called to Article 5-A pertaining to Public contracts as recited in the General Municipal Law, and more specifically, Sections 103-A and 103-B, pertaining to cancellations of existing contracts and disqualifications of future contracts and awards with any political subdivision of the State of New York.

This letter is written to you pursuant to the direction contained in the law as the District Attorney conducting the investigation before the Grand Jury.

Very truly yours,

MICHAEL F. DILLON
District Attorney

MFD:ES

Registered mail-return receipt requested.

**Exhibit A, Waiver of Immunity, Annexed to
Foregoing Affidavit.**

COUNTY COURT, ERIE COUNTY

Pre-Indictment No. 36,369

THE PEOPLE OF THE STATE OF NEW YORK

against

JOHN DOE, et al.

I have been advised by District Attorney JOHN J. HONAN that the Grand Jury of the County of Erie, now in session, is investigating charges of Conspiracy (Sections 105.00, 105.05, 105.10, 105.15 of the Penal Law); Bribery (Sections 200, 200.10, 200.20, 200.25, 200.30, 200.35, 200.45, 200.50 of the Penal Law); Larceny (Article 155 of the Penal Law) and other matters of every nature whatsoever appertaining thereto. I am further advised that such charge and investigation may involve me.

I have also been advised by Mr. JOHN J. HONAN that I need not appear or give evidence before said Grand Jury concerning the aforesaid matters unless I wish to do so; that I am entitled to consult counsel and that if I do testify before said Grand Jury, any testimony given by me must be voluntary on my part.

No one has made any threats or promises to me whatsoever in connection with my appearance or any testimony that I may give before the Grand Jury. I have also been advised by JOHN J. HONAN that anything I may say or testify to before said Grand Jury in said investigation can be used against me on the prosecution of any charge or

*Exhibit A, Waiver of Immunity, Annexed to
Foregoing Affidavit.*

indictment concerning the transactions about which I may testify.

And, with full understanding of my declarations herein, and of my own free will, I hereby expressly waive any immunity that might otherwise come to me because or on account of my appearance or any testimony that I may give before said Grand Jury in connection with said investigation.

M. RUSSELL TURLEY

Dated: Buffalo, N. Y., the 8th day of February, 1971.

STATE OF NEW YORK, }
COUNTY OF ERIE, }
CITY OF BUFFALO }

On this 8th day of February, 1971, before me personally appeared M. RUSSELL TURLEY to me known to be the person described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

.....
Notary Public.
Commissioner of Deeds.

**Exhibit B, Waiver of Immunity, Annexed to
Foregoing Affidavit.**

COUNTY COURT, ERIE COUNTY

Pre-Indictment No. 36,369

THE PEOPLE OF THE STATE OF NEW YORK

against

JOHN DOE, et al

I have been advised by District Attorney JOHN J. HONAN that the Grand Jury of the County of Erie, now in session, is investigating charges of Conspiracy (Sections 105.00, 105.05, 105.10, 105.15 of the Penal Law); Bribery (Sections 200, 200.10, 200.20, 200.25, 200.30, 200.35, 200.45, 200.50 of the Penal Law); Larceny (Article 155 of the Penal Law) and other matters of every nature whatsoever appertaining thereto. I am further advised that such charge and investigation may involve me.

I have also been advised by Mr. JOHN J. HONAN that I need not appear or give evidence before said Grand Jury concerning the aforesaid matters unless I wish to do so; that I am entitled to consult counsel and that if I do testify before said Grand Jury, any testimony given by me must be voluntary on my part.

No one has made any threats or promises to me whatsoever in connection with my appearance or any testimony that I may give before the Grand Jury. I have also been advised by JOHN J. HONAN that anything I may say or testify to before said Grand Jury in said investigation can

*Exhibit B, Waiver of Immunity, Annexed to
Foregoing Affidavit.*

be used against me on the prosecution of any charge or indictment concerning the transactions about which I may testify.

And, with full understanding of my declarations herein, and of my own free will, I hereby expressly waive any immunity that might otherwise come to me because or on account of my appearance or any testimony that I may give before said Grand Jury in connection with said investigation.

ROBERT H. STIEVATER

Dated: Buffalo, N. Y., the 8th day of February, 1971.

STATE OF NEW YORK, }
COUNTY OF ERIE, }
CITY OF BUFFALO }

On this 8th day of February, 1971, before me personally appeared ROBERT H. STIEVATER to me known to be the person described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

.....
Notary Public.
Commissioner of Deeds.

[SAME TITLE]

Lefkowitz Motion for Summary Judgment.**MOTION FOR SUMMARY JUDGMENT TO RULE 56**

The defendants, Louis J. Lefkowitz and Nelson A. Rockefeller, move the Court for a summary judgment pursuant to Rule 56 of the Federal Rules of Federal Procedure upon the summons and complaint herein, upon the answer herein, and upon all the papers and proceedings heretofore had.

LOUIS J. LEFKOWITZ
Attorney General of the State of
New York
Attorney for Defendants
Lefkowitz and Rockefeller

By s/ DOUGLAS S. DALES, JR.
DOUGLAS S. DALES, JR.
Assistant Attorney General

Notice of Motion.

To: ROBINSON & SPELLER, Esqs.
Attorneys for Plaintiffs

MICHAEL F. DILLON, Esq.
District Attorney of Erie County

PETER J. NOTARO, Esq.
Assistant District Attorney
Chief, Appeals Bureau, of Counsel

ROBERT E. CASEY, JR., Esq.
County Attorney for the County
of Erie and Attorney for the
Defendant B. John Tutuska,

PLEASE TAKE NOTICE that the undersigned will bring the above motion on for hearing before this Court at the U. S. Courthouse, Buffalo, New York, on July 2, 1971, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

LOUIS J. LEFKOWITZ
Attorney General of the State of
New York
Attorney for Defendants
Lefkowitz and Rockefeller

By s/ DOUGLAS S. DALES, JR.
DOUGLAS S. DALES, JR.
Assistant Attorney General

Tutuska Motion for Summary Judgment.

CIVIL ACTION FILE No. Civ-1971-80

**MOTION FOR SUMMARY JUDGMENT
PURSUANT TO RULE 56**

The defendant B. John Tutuska, moves the court for a summary judgment pursuant to Rule 56 of the Federal Rules of Federal Procedure upon the summons and complaint herein, upon the answer herein, and upon all the papers and proceedings heretofore had.

ROBERT E. CASEY, JR., Erie
County Attorney and Attorney for the
Defendant, B. John Tutuska
Office and P. O. Address
25 Delaware Avenue
Buffalo, New York 14202

By: JUSTYN E. MILLER
Assistant County Attorney

Notice of Motion.

To: ROBINSON & SPELLER, Esqs.
Attorneys for Plaintiffs

MICHAEL F. DILLON, Esq.
District Attorney of Erie County

PETER J. NOTARO, Esq.
Assistant District Attorney
Chief, Appeals Bureau of Counsel

LOUIS J. LEFKOWITZ
Attorney General of the State of New York
Attorney for Defendants, Lefkowitz and Rockefeller

PLEASE TAKE NOTICE that the undersigned will bring the above motion on for hearing before this Court at the U. S. Courthouse, Buffalo, New York, on July 2, 1971, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

ROBERT E. CASEY, JR.
County Attorney for the County of Erie
and Attorney for the Defendant,
B. John Tutuska

By: JUSTYN E. MILLER
Assistant County Attorney

Decision and Order Granting Three-Judge Court.

APPEARANCES: Robinson and Speller (Richard O. Robinson, of Counsel), Buffalo, New York, for Plaintiffs.

Louis J. Lefkowitz, Attorney General of the State of New York (Douglas S. Dales, Jr., Assistant Attorney General, of Counsel), Albany, New York, for Defendants Lefkowitz and Rockefeller.

Robert E. Casey, Jr., Erie County Attorney (Justyn E. Miller, Assistant County Attorney, of Counsel), Buffalo, New York, for Defendant Tutuska.

The plaintiffs in this action are two licensed architects who have in the past been employed by various municipalities and state and county agencies in New York. In February, 1971 they were called to testify before the holdover January, 1971 Erie County Grand Jury. At that time both were requested to sign waivers of immunity, and each declined while asserting his Fifth Amendment privilege against self-incrimination. Thereafter, in February, 1971, the Erie County District Attorney sent the following letter to the County Executive, County Attorney, County Legislature, State Attorney General, State Commissioner of Transportation, and the plaintiffs' architectural firm:

Please be advised that the following persons were subpoenaed to appear before the January, 1971 Hold-over Erie County Grand Jury to testify with regard to an investigation concerning transactions and contracts that they had with the County of Erie, a political subdivision of the State of New York:

J. Lloyd Walker
M. Russell Turley
Robert H. Stievater

Decision and Order Granting Three-Judge Court.

Pursuant to said subpoenas they were individually asked to sign a Waiver of Immunity against subsequent criminal prosecution and each refused. Mr. Walker was nonetheless called before the Grand Jury and has testified with immunity. Mr. Turley and Mr. Stievater, upon their respective refusals to sign such a waiver, were excused and have not been called before the Grand Jury.

Your attention is called to Article 5-A pertaining to Public contracts as recited in the General Municipal Law, and more specifically, Sections 103-A and 103-B, pertaining to cancellations of existing contracts and disqualifications of future contracts and awards with any political subdivision of the State of New York.

This letter is written to you pursuant to the direction contained in the law as the District Attorney conducting the investigation before the grand jury.

/s/ Michael F. Dillon
District Attorney

Claiming that the defendants now threaten to nullify the employment opportunities and contractual rights of plaintiffs as individuals and as a partnership, the plaintiffs pray for a judgment declaring Sections 103-a and 103-b of the New York General Municipal Law and Sections 2601 and 2602 of the New York Public Authorities Law violative of plaintiffs' Fifth Amendment rights. Since they further seek a permanent injunction against the operation of the above statutes, they have appropriately asked for the convening of a three-judge district court pursuant to Title 28, United States Code, Sections 2281 and 2284.

Each of the sections which plaintiffs attack was added to the laws of New York in 1959. Their background is recited in detail in *United States ex rel. Laino v. Warden of Wallkill Prison*, 246 F. Supp. 72 92-99 (S.D.N.Y. 1965), aff'd per

Decision and Order Granting Three-Judge Court.

curiam, 355 F. 2d 208 (2d Cir. 1966), wherein an attack on the constitutionality of Section 103-b was unsuccessful. Aside from minor variations in language, the statutes are essentially identical. Generally, they provide that, in all contracts awarded by a municipality or public authority of the state for work or services, a clause must be inserted to provide that, upon refusal of a person to testify before a grand jury, to answer any relevant question, or to waive immunity against subsequent criminal prosecution, such person and any firm of which he is a member shall be disqualified for five years from contracting with any municipality or public authority, and any existing contracts may be cancelled by the municipality or public authority without incurring penalty.

The defendants' position is that the requirements for convoking a three-judge court are lacking and that the waiver of immunity provisions of the statutes under attack do not infringe upon any federally protected right.

Upon application for a three-judge court, the district judge must determine whether the constitutional question raised is substantial, whether the complaint at least formally alleges a basis for equitable relief, and whether the case otherwise comes within the requirements of the three-judge statute. See *Idlewild Liquor Corp. v. Epstein*, 370 U.S. 713 (1962).

There is no serious question that the plaintiffs have satisfied the requirement of complying with Title 28, United States Code, Section 2284, and that a basis for equitable jurisdiction has been alleged. The determinative question at this point is whether a substantial constitutional question has been alleged. In view of recent decisions in this area, this question is not difficult to decide.

In *Holland v. Hogan*, 272 F.Supp. 855 (S.D.N.Y. 1967), a three-judge court was presented with the same constitutional attack on Sections 103-b and 2602. The panel's deci-

. *Decision and Order Granting Three-Judge Court.*

sion to abstain was reversed by the United States Supreme Court, see 20 L.Ed.2d 1342 (1968), and remanded to the panel for further consideration in light of *Gardner v. Broderick*, 392 U.S. 273, 20 L.Ed. 2d 1082 (1968), and *George Campbell Painting Corp. v. Reid*, 392 U.S. 286, 20 L.Ed.2d 1094 (1968). For reasons unknown to this court, the parties in *Holland* have not reargued, and no decision on the merits has been reached.

In *Gardner*, Section 1123 of the New York City Charter was declared unconstitutional. That section is analogous to the statutes attacked by plaintiffs here. In *Campbell*, the question of the constitutionality of Section 2601 was expressly left open.

The Court finds that plaintiffs have presented a substantial constitutional question.

Accordingly, the Honorable Chief Judge of the United States Court of Appeals for the Second Circuit is hereby requested to convene a three-judge court to hear and determine this cause.

So ordered.

JOHN T. CURTIN
John T. Curtin
United States District Judge

Dated: November 23, 1971.

Order Designating Judges.

Having been notified by the Honorable John T. Curtin, United States District Judge for the Western District of New York, that an application has been filed in the above matter for relief pursuant to Title 28 United States Code Section 2284 I hereby designate the following judges, in addition to the Honorable John T. Curtin, to hear and determine said cause as provided by law: Honorable Wilfred Feinberg, United States Circuit Judge, and Honorable John O. Henderson, Chief Judge, United States District Judge for the Western District of New York.

IT IS HEREBY ORDERED that this order be filed in the above entitled cause in the United States District Court for the Western District of New York.

HENRY J. FRIENDLY
Chief Judge
Second Circuit, U. S. Court of
Appeals.

Dated: New York, New York
November 26, 1971.

Order.

In view of the attached order of designation, it is
ORDERED:

The three-judge panel shall convene at 11:30 A.M. on
January 10, 1972.

The plaintiffs' opening brief shall be filed with the Clerk
of this court, served on opposing counsel, and distributed
directly to each judge no later than December 27, 1971.

The defendants' briefs shall be similarly filed, served,
and distributed no later than January 3, 1972.

If the plaintiffs wish to submit a reply brief, they must
do so no later than January 7, 1972.

So Ordered.

JOHN T. CURTIN
United States District Judge

Dated: December 2, 1971.

Decision of Three-Judge Court.

**UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF NEW YORK.**

Civil 1971-80

M. RUSSELL TURLEY, ROBERT H. STIEVATER,
Plaintiffs,

vs.

**LOUIS J. LEFKOWITZ, NELSON A. ROCKEFELLER,
B. JOHN TUTUSKA,**
Defendants.

Before WILFRED FEINBERG, *Circuit Judge*, and JOHN O.
HENDERSON and JOHN T. CURTIN, *District Judges*.

APPEARANCES: Robinson and Speller (Richard O. Robinson,
of Counsel), Buffalo, New York, for Plain-
tiffs.

Louis J. Lefkowitz, Attorney General of the
State of New York (Douglas S. Dales, Jr.,
Assistant Attorney General, of Counsel),
Albany, New York, for Defendants Lefko-
witz and Rockefeller.

James L. Magavern, Erie County Attorney
(Justyn E. Miller, Assistant County Attor-
ney, of Counsel), Buffalo, New York, for
Defendant Tutuska.

CURTIN, District Judge:

The plaintiffs in this action are licensed architects who
have in the past been employed by various municipalities

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and state and county agencies in New York. In February, 1971 they were called to testify before the holdover January, 1971 Erie County Grand Jury. At that time both were requested to sign waivers of immunity, and each declined while asserting his Fifth Amendment privilege against self-incrimination. Thereafter, in February, 1971, the Erie County District Attorney sent the following letter to the County Executive, County Attorney, County Legislature, State Attorney General, State Commissioner of Transportation, and the plaintiffs' architectural firm:

Please be advised that the following persons were subpoenaed to appear before the January, 1971 Hold-over Erie County Grand Jury to testify with regard to an investigation concerning transactions and contracts that they had with the County of Erie, a political subdivision of the State of New York:

J. Lloyd Walker
M. Russell Turley
Robert H. Stievater

Pursuant to said subpoenas they were individually asked to sign a Waiver of Immunity against subsequent criminal prosecution and each refused. Mr. Walker was nonetheless called before the Grand Jury and has testified with immunity. Mr. Turley and Mr. Stievater, upon their respective refusals to sign such a waiver, were excused and have not been called before the Grand Jury.

Your attention is called to Article 5-A pertaining to Public contracts as recited in the General Municipal Law, and more specifically, Sections 103-A and 103-B, pertaining to cancellations of existing contracts and disqualifications of future contracts and awards with any political subdivision of the State of New York.

• • • •

Decision of Three-Judge Court.

Claiming that the defendants now threaten to nullify the plaintiffs' employment opportunities and contractual rights plaintiffs pray for a judgment declaring Sections 103-a¹ and 103-b² of the New York General Municipal Law and Sections 2601³ and 2602⁴ of the New York Public Authorities Law violative of plaintiffs' Fifth Amendment rights. Since they further seek a permanent injunction against the operation of the above statutes, a three judge panel was convened to hear argument.

Each of the sections which plaintiffs attack was added to the laws of New York in 1959. Their background is recited in detail in *United States ex rel. Laino v. Warden of Wallkill Prison*, 246 F.Supp. 72, 92-99 (S.D.N.Y. 1965), aff'd per curiam, 355 F.2d 208 (2d Cir. 1966), wherein an attack on the constitutionality of Section 103-b was unsuccessful. Aside from minor variations in language, the statutes are essentially identical. Generally, they provide that in all contracts awarded by a municipality or public authority of the state for Work or services, a clause must be inserted to provide that, upon refusal of a person to testify before a grand jury, to answer any relevant question, or to waive immunity against subsequent criminal prosecution, such person and any firm of which he is a member shall be disqualified for five years from contracting with any municipality or public authority, and any existing contracts may be cancelled by the municipality or public authority without incurring penalty.

The narrow issue before the court is whether plaintiffs' "testimony was demanded before the grand jury in part so that it might be used to prosecute [them], and not solely for the purpose of securing an accounting of [their] performance of [their] public trust". See *Gardner v. Broderick*, 392 U.S. 273, at 279 (1968). In view of the Supreme Court's decision in *Gardner* and a number of other cases, discussed below, the proper resolution of the question is not difficult.

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In *Garrity v. New Jersey*, 385 U.S. 493 (1967), the court held that statements made by police officers during an investigation by the state attorney general into the alleged fixing of traffic tickets were inadmissible since the choice given to them—either to forfeit their jobs or incriminate themselves—violated their constitutional privilege against self-incrimination. On the same day, in *Spevack v. Klein*, 385 U.S. 511 (1967), the court decided that New York could not disbar a lawyer solely for refusing, on the basis of the privilege against self-incrimination, to produce financial records and to testify at a judicial inquiry.

In *Gardner*, the court clearly set out the controlling principle. While a state may not discharge a public employee for refusing to waive a right which the Constitution guarantees to him, such a discharge would be without constitutional prohibition if, without being required to waive his immunity, the public employee fails to answer questions relevant to the performance of his official duties. The point was reiterated in *Uniformed Sanitation Men v. Commissioner*, 392 U.S. 280, at 284-85 (1968):

As we stated in *Gardner* . . . if New York had demanded that petitioners answer questions specifically, directly, and narrowly relating to the performance of their official duties on pain of dismissal from public employment without requiring relinquishment of the benefits of the constitutional privilege, and if they had refused to do so, this case would be entirely different. In such a case, the employee's right to immunity as a result of his compelled testimony would not be at stake. But here the precise and plain impact of the proceedings against petitioners . . . was to present them with a choice between surrendering their constitutional rights or their jobs. Petitioners as public employees are entitled, like all other persons,

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to the benefit of the Constitution, including the privilege against self-incrimination. . . . At the same time, petitioners, being public employees, subject themselves to dismissal if they refuse to ~~account~~ account for their performance of their public trust, after proper proceedings, which do not involve an attempt to coerce them to relinquish their constitutional rights.

Quite clearly, then, the plaintiffs' disqualification from public contracting for five years as a penalty for asserting a constitutional privilege is violative of their Fifth Amendment rights. Equally clear is that, within the proper limits, public employees are not immune from being compelled to account for their official actions in order to keep their jobs. Until rewritten so as to comply with constitutional standards, Sections 103-a and 103-b of New York's General Municipal Law and Sections 2601 and 2602 of the New York Public Authorities Law are unconstitutional, and the defendants are enjoined from their further enforcement.

So ordered.

/s/ Wilfred Feinberg
U.S.C.J.

/s/ John O. Henderson
U.S.D.J.

/s/ John T. Curtin
U.S.D.J.

Dated: April 28, 1972

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FOOTNOTES

¹ Section 103-a provides:

A clause shall be inserted in all specifications or contracts made or awarded by a municipal corporation or any public department, agency or official thereof on or after the first day of July, nineteen hundred fifty-nine or by a fire district or any agency or official thereof on or after the first day of September, nineteen hundred sixty, for work or services performed or to be performed, or goods sold or to be sold, to provide that upon the refusal of a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examines them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

(a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district, or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that

(b) any and all contracts made with any municipal corporation or any public department, agency or official thereof on or after the first day of July, nineteen hundred fifty-nine or with any fire district or any agency or official thereof on or after the first day of September, nineteen hundred sixty, by such person, and by any firm, partnership, or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the municipal corporation or fire district without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the municipal corporation or fire district for goods delivered

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or work done prior to the cancellation or termination shall be paid.

The provisions of this section as in force and effect prior to the first day of September, nineteen hundred sixty, shall apply to specifications or contracts made or awarded by a municipal corporation on or after the first day of July, nineteen hundred fifty-nine, but prior to the first day of September, nineteen hundred sixty.

* Section 103-b provides:

Any person who, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority, or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer and any relevant question concerning such transaction or contract, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district, or with any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the provisions of section one hundred three-c of this article.

It shall be the duty of the officer conducting the investigation before the grand jury, the head of a state department, the chairman of the temporary state commission or other state agency, the organized crime task force in the department of law, the head of a city department or other city agency before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer or director, to the commissioner of transportation of the state of New York and the appropriate departments, agencies and officials of the state, political subdivisions thereof or public authorities with whom the person so refusing and any firm, partnership or corporation of which he is a member, partner, director or officer, is known to have a contract. However, when such refusal occurs before a body other

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than a grand jury, notice of refusal shall not be sent for a period of ten days after such refusal occurs. Prior to the expiration of this ten day period, any person, firm, partnership or corporation which has become liable to the cancellation or termination of a contract or disqualification to contract on account of such refusal may commence a special proceeding at a special term of the supreme court, held within the judicial district in which the refusal occurred, for an order determining whether the questions in response to which the refusal occurred were relevant and material to the inquiry. Upon the commencement of such proceeding, the sending of such notice of refusal to answer shall be subject to order of the court in which the proceeding was brought in a manner and on such terms as the court may deem just. If a proceeding is not brought within ten days, notice of refusal shall thereupon be sent as provided herein.

³ Section 2601 provides:

A clause shall be inserted in all specifications or contracts hereafter made or awarded by any public authority or by any official of any public authority created by the state or any political subdivision, for work or services performed or to be performed or goods sold or to be sold, to provide that upon the refusal by a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

(a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that

(b) any and all contracts made with any public authority or official thereof, since the effective date of this law, by such

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person and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation or termination shall be paid.

* Section 2602 provides:

Any person, who, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision hereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, and any firm, partnership or corporation, of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or any official of any public authority created by the state or any political subdivision, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the provisions of section twenty-six hundred three of this title.

It shall be the duty of the officer conducting the investigation before the grand jury, the head of a state department, the chairman of the temporary state commission or other state agency, the organized crime task force in the department of law, the head of a city department or other city agency before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer or director, to the commissioner of transportation of the state of New York, or the commissioner of general services as the case may be, and the appropriate departments, agencies and officials of the state, political subdivisions thereof or public authorities with whom the persons so refusing and any firm, partnership or corporation of which he is a member, partner, director or officer, is known to have a contract. How-

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ever, when such refusal occurs before a body other than a grand jury, notice of refusal shall not be sent for a period of ten days after such refusal occurs. Prior to the expiration of this ten day period, any person, firm, partnership or corporation which has become liable to the cancellation or termination of a contract or disqualification to contract on account of such refusal may commence a special proceeding at a special term of the supreme court, held within the judicial district in which the refusal occurred, for an order determining whether the questions in response to which the refusal occurred were relevant and material to the inquiry. Upon the commencement of such proceeding, the sending of such notice of refusal to answer shall be subject to order of the court in which the proceeding was brought in a manner and on such terms as the court may deem just. If a proceeding is not brought within ten days, notice of refusal shall thereupon be sent as provided herein.

Lefkowitz Notice of Appeal.

Notice is hereby given that the defendants, Louis J. Lefkowitz and Nelson A. Rockefeller, hereby appeal to the Supreme Court of the United States from an order of a three-judge Federal District Court, convened in the Western District of New York, which order was entered in this action on May 1, 1972, and which declared New York General Municipal Law, §§ 103-a and 103-b, and New York Public Authorities Law, §§ 2601 and 2602, unconstitutional and enjoined the defendants from further enforcement thereof.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Dated: Albany, New York, June 21, 1972.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
Lefkowitz and Rockefeller
By: DOUGLAS S. DALES, JR.
Assistant Attorney General

To:

ROBINSON & SPELLER, Esqs.
Attorneys for Plaintiffs

JAMES L. MAGAVERN, Esq.
County Attorney for the County
of Erie and Attorney for the
Defendant B. John Tutuska

HONORABLE JOHN K. ADAMS
Clerk, United States District Court
Western District of New York

Tutuska Notice of Appeal.

Notice is hereby given that the defendant, B. John Tutuska, hereby appeals to the Supreme Court of the United States from an order of a three-judge Federal District Court, convened in the Western District of New York, which order was entered in this action on May 1, 1972, and which declared New York General Municipal Law, §§ 103-a and 103-b, and New York Public Authorities Law, §§ 2601 and 2602, unconstitutional and enjoined the defendants from further enforcement thereof.

This appeal is taken pursuant to 28 U.S.C., § 1253.

Dated: Buffalo, New York, June 30, 1972.

JAMES L. MAGAVERN
Erie County Attorney
Attorney for Defendant
B. John Tutuska

S/ JAMES L. MAGAVERN
Erie County Attorney

To:

ROBINSON & SPELLER, Esqs.
Attorneys for Plaintiffs

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
Lefkowitz and Rockefeller

HONORABLE JOHN K. ADAMS
Clerk, United States District Court
Western District of New York